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CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1059

Introduced by Assembly Member Keeley

February 23, 2001

~~An act to amend Sections 2341 and 2854 of the Probate Code, and to amend Sections 366.4 and 11405 of the Welfare and Institutions Code, relating to conservators and guardians, and declaring the urgency thereof, to take effect immediately. An act to amend Section 660 of, and to add and repeal Section 660.1 of, the Harbors and Navigation Code, relating to vessels.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1059, as amended, Keeley. ~~Conservators and guardians. Vessels.~~

(1) Existing law requires generally that any ordinance, law, regulation, or rule adopted by certain state or local entities relating to vessels pertain only to time-of-day restrictions, speed zones, special-use areas, and sanitation and pollution control.

*This bill would require the Department of Boating and Waterways, upon request of the Director of Fish and Game, or his or her designee, to restrict or prohibit, based on the request, recreational vessel activity on waters of the state in general until January 1, 2004, and in Agua Hedionda Lagoon in San Diego County indefinitely, if that vessel activity would hinder or jeopardize efforts to control or eradicate *Caulerpa taxifolia*.*

The bill would require that notice of the restriction or prohibition be posted conspicuously and, at a minimum, in areas where boats are launched into the waterway where the restriction or prohibition is in effect. The bill would subject the operator of a vessel who violates any restriction or prohibition imposed pursuant to the bill to a fine of not more than \$250, thereby imposing a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the State. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires the Department of Justice to maintain a Statewide Registry of conservators and guardians, and requires all persons who wish to serve as a conservator or guardian, or who are currently serving as a conservator or guardian, to register and reregister with the Statewide Registry, except as provided. Existing law allows the Department of Justice to charge a reasonable fee to persons registering and reregistering with the Statewide Registry for the cost of that registration. Existing law also prohibits a superior court from appointing or permitting a person to serve as a private professional conservator or private professional guardian unless the person has filed certain information with the county clerk.~~

~~This bill would except certain nonrelated guardians of the person of a minor, appointed under specified circumstances by the juvenile court or the probate court, from the registration and filing requirements.~~

~~The bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

~~SECTION 1. The Legislature finds and declares as follows:~~

SECTION 1. Section 660 of the Harbors and Navigation Code is amended to read:

660. (a) Any ordinance, law, regulation, or rule relating to vessels, which is adopted pursuant to provisions of law other than this chapter by any entity other than the department, including but not limited to any county, city, port authority, district, or any state agency other than the department, shall, notwithstanding any other provision of law, pertain only to time-of-day restrictions, speed zones, special-use areas, and sanitation and pollution control, and the measure shall not conflict with this chapter or the regulations adopted by the department. Except as provided in subdivision ~~(e)~~ (d), any measure relating to boats or vessels adopted by any governmental entity other than the department shall be submitted to the department prior to adoption and at least 30 days prior to the effective date thereof.

(b) *Upon request of the Director of Fish and Game, or his or her designee, the department shall restrict or prohibit, based on the request, recreational vessel activity in Agua Hedionda Lagoon in San Diego County if that vessel activity would hinder or jeopardize the efforts of the Department of Fish and Game to control or eradicate *Caulerpa taxifolia*. Notice of the restriction or prohibition shall be posted conspicuously, and, at a minimum, in areas where boats are launched into the waterway where the restriction or prohibition is in effect. The operator of a vessel who violates any restrictions or prohibition pursuant to this subdivision is subject to a fine of not more than two hundred fifty dollars (\$250).*

(c) The department may make special rules and regulations governing the use of boats or vessels on any body of water within the territorial limits of two or more counties, cities, or other political subdivisions if no special rules or regulations exist or if the department determines that the local laws regulating the use of boats or vessels on that body of water is not uniform and that uniformity is practicable and necessary.

~~(e)~~

(d) (1) Any entity, including but not limited to any county, city, port authority, district, or state agency, otherwise authorized by

1 law to adopt measures governing the use and equipment, and
2 matters relating thereto, of boats or vessels, may adopt emergency
3 rules and regulations ~~which~~ *that* are not in conflict with the general
4 laws of the state relating to boats and vessels using any waters
5 within the jurisdiction of the entity if those emergency rules and
6 regulations are required to insure the safety of persons and
7 property because of disaster or other public calamity.

8 (2) The emergency rules and regulations adopted under
9 paragraph (1) shall become effective immediately upon adoption
10 and may remain in effect for not to exceed 60 days thereafter. The
11 emergency rules and regulations shall be submitted to the
12 department on or before their adoption.

13 (3) After submission of emergency rules and regulations
14 adopted pursuant to paragraph (1) to the department, the
15 department may authorize the adopting entity to make the
16 emergency rules and regulations effective for the period of time
17 greater than 60 days that is necessary in view of the disaster or
18 circumstances.

19 *SEC. 2. Section 660.1 is added to the Harbors and Navigation*
20 *Code, to read:*

21 *660.1. (a) Upon request of the Director of Fish and Game, or*
22 *his or her designee, the department shall restrict or prohibit, based*
23 *on the request, recreational vessel activity on waters of the state if*
24 *that vessel activity would hinder or jeopardize the efforts of the*
25 *Department of Fish and Game to control or eradicate Caulerpa*
26 *taxifolia. Notice of the restriction or prohibition shall be posted*
27 *conspicuously, and, at a minimum, in areas where boats are*
28 *launched into the waterway where the restriction or prohibition is*
29 *in effect. The operator of a vessel who violates any restriction or*
30 *prohibition pursuant to this subdivision is subject to fine of not*
31 *more than two hundred fifty dollars (\$250).*

32 *(b) This section shall remain in effect only until January 1,*
33 *2004, and as of that date is repealed, unless a later enacted statute,*
34 *is enacted before January 1, 2004, deletes or extends that date.*

35 *SEC. 3. No reimbursement is required by this act pursuant to*
36 *Section 6 of Article XIII B of the California Constitution because*
37 *the only costs that may be incurred by a local agency or school*
38 *district will be incurred because this act creates a new crime or*
39 *infraction, eliminates a crime or infraction, or changes the penalty*
40 *for a crime or infraction, within the meaning of Section 17556 of*

1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

4 ~~(a) Children who are in foster care or at risk of entering foster~~
5 ~~care because their parents are unable to provide care and~~
6 ~~supervision are in need of stable and permanent relationships with~~
7 ~~responsible adult caregivers. When neither reunification with the~~
8 ~~parent nor adoption is available as a permanent plan for the child,~~
9 ~~legal guardianship can provide the safety and security of a~~
10 ~~permanent home for the child. While many relatives become legal~~
11 ~~guardians of foster children, foster parents are frequently willing~~
12 ~~to commit to becoming guardians of foster children in their care.~~
13 ~~Thus, foster parents are a valuable resource for the provision of~~
14 ~~permanency and stability for children who cannot be returned to~~
15 ~~their parents.~~

16 ~~(b) Research shows that foster parents will often commit to~~
17 ~~becoming legal guardians for sibling groups of two or more foster~~
18 ~~children, thus ensuring that important sibling relationships are~~
19 ~~preserved. The maintenance of sibling relationships, as described~~
20 ~~in Section 16002 of the Welfare and Institutions Code, is a public~~
21 ~~policy priority.~~

22 ~~(c) A recent change to Section 2341 of the Probate Code now~~
23 ~~requires as of January 1, 2000, that all “private professional~~
24 ~~guardians” register with the Statewide Registry and reregister~~
25 ~~every three years thereafter, and be subject to the payment of a~~
26 ~~registration and reregistration fee. “Private professional~~
27 ~~guardians” are defined as all unrelated persons appointed as~~
28 ~~guardians of the person, the estate, or both the person and the estate~~
29 ~~of two or more wards. This fee has been initially established at~~
30 ~~three hundred eighty five dollars (\$385) every three years.~~

31 ~~(d) This required registration fee presents a financial hardship~~
32 ~~for existing foster parents who are guardians of two or more~~
33 ~~former foster children, and acts as a financial deterrent to foster~~
34 ~~parents considering guardianship for sibling groups in their care.~~

35 ~~(e) Certain nonrelated adults who are appointed guardians of~~
36 ~~the person of foster children or children who are at risk of entry~~
37 ~~into foster care by juvenile or probate court are not the intended~~
38 ~~population to be monitored by the Statewide Registry. When~~
39 ~~nonrelated guardians are in receipt of assessment and case~~
40 ~~management services by the county welfare department pursuant~~

1 to Section 11405 of the Welfare and Institutions Code there are
2 sufficient safeguards in place to monitor the suitability and
3 appropriateness of those nonrelated guardians of former foster
4 care children or those children at risk of foster care placement.

5 (f) Therefore, it is the intent of the Legislature to exempt from
6 the Statewide Registry those nonrelated guardians of the person of
7 minors who were appointed by the juvenile court pursuant to
8 Section 366.26 of the Welfare and Institutions Code, or appointed
9 by the probate court pursuant to Section 1514 of the Probate Code
10 and in receipt of AFDC-FC payments and case management
11 services from the county welfare department, as evidenced by a
12 Notice of Action of AFDC-FC eligibility.

13 SEC. 2. Section 2341 of the Probate Code is amended to read:

14 2341. (a) As used in this article, “private professional
15 conservator” means a person or entity appointed as conservator of
16 the person or estate, or both, of two or more conservatees at the
17 same time who are not related to the conservator by blood or
18 marriage, except a bank or other entity authorized to conduct the
19 business of a trust company, or any public officer or public agency
20 including the public guardian, public conservator, or other agency
21 of the State of California. In the case of an entity, all natural
22 persons who are authorized by the entity to perform the functions
23 of a conservator shall comply with this article. The court may, at
24 its discretion, require any person who is the conservator for only
25 one conservatee not related to the conservator by blood or
26 marriage to comply with this article, and in that case, references
27 in this article to a “private professional conservator” includes
28 those persons.

29 (b) As used in this article, “private professional guardian”
30 means a person or entity appointed as guardian of the person or
31 estate, or both, of two or more wards at the same time who are not
32 related to the guardian by blood or marriage, except a bank or other
33 entity authorized to conduct the business of a trust company, or any
34 public officer or public agency including the public guardian,
35 public conservator, or other agency of the State of California. In
36 the case of an entity, all natural persons who are authorized by the
37 entity to perform the functions of a guardian shall comply with this
38 article. The court may, at its discretion, require any person who is
39 the guardian for only one ward not related to the guardian by blood
40 or marriage to comply with this article, and in that case, references

1 in this article to a “private professional guardian” includes those
2 persons.

3 As used in this article, “private professional guardian” does not
4 include a nonrelated guardian of the person of a minor appointed
5 by the court, if the appointment results from the selection of a
6 permanency plan for a dependent child or ward pursuant to Section
7 366.26 of the Welfare and Institutions Code. It also does not
8 include a nonrelated guardian of the person of a minor appointed
9 by the court pursuant to Section 1514 if that child is in receipt of
10 AFDC-FC payments and case management services from the
11 county welfare department, as evidenced by a Notice of Action of
12 AFDC-FC eligibility.

13 (c) As used in this article, “private professional trustee” means
14 a nonprofit charitable corporation appointed as trustee pursuant to
15 Section 15604.

16 SEC. 3. Section 2854 of the Probate Code is amended to read:

17 2854. (a) This chapter does not apply to any public
18 conservator, public guardian, or to any conservator or guardian
19 who is related to the conservatee or ward by blood, marriage, or
20 adoption. This chapter does not apply to any person who is not
21 required to file information with the county clerk pursuant to
22 Section 2340, to any person or entity subject to the oversight of a
23 local government, including an employee of a city, county, or city
24 and county, or to any person or entity subject to the oversight of
25 the state or federal government, including a supervised financial
26 institution.

27 (b) This chapter does not apply to any conservator who resided
28 in the same home with the conservatee immediately prior to the
29 condition or event that gave rise to the necessity of a
30 conservatorship. This subdivision does not create any order or
31 preference of appointment, but simply exempts a conservator
32 described by this subdivision from registration.

33 (c) This chapter does not apply to a nonrelated guardian of the
34 person of a minor appointed by the court as the result of the
35 selection of a permanency plan for a dependent child or ward
36 pursuant to Section 366.26 of the Welfare and Institutions Code.
37 It also does not apply to a nonrelated guardian of the person of a
38 minor appointed pursuant to Section 1514 if that child is in receipt
39 of AFDC-FC payments and case management services from the

1 county welfare department, as evidenced by a Notice of Action of
2 AFDC-FC eligibility.

3 SEC. 4. ~~Section 366.4 of the Welfare and Institutions Code is~~
4 ~~amended to read:~~

5 366.4. (a) Any minor for whom a guardianship has been
6 established resulting from the selection or implementation of a
7 permanent plan pursuant to Section 366.26 is within the
8 jurisdiction of the juvenile court. For those minors, Part 2
9 (commencing with Section 1500) of Division 4 of the Probate
10 Code, relating to guardianship, shall not apply. If no specific
11 provision of this code or the California Rules of Court is
12 applicable, the provisions applicable to the administration of
13 estates under Part 4 (commencing with Section 2100) of Division
14 4 of the Probate Code govern so far as they are applicable to like
15 situations.

16 (b) Nonrelated legal guardians of the person of a minor
17 established as a result of a permanent plan selected pursuant to
18 Section 366.26 are exempt from the provisions of Sections 2850
19 and 2851 of the Probate Code.

20 SEC. 5. ~~Section 11405 of the Welfare and Institutions Code is~~
21 ~~amended to read:~~

22 11405. (a) AFDC-FC shall be paid to an otherwise eligible
23 child living with a nonrelated legal guardian, provided that the
24 legal guardian cooperates with the county welfare department in
25 all of the following:

26 (1) ~~Developing a written assessment of the child's needs.~~

27 (2) ~~Updating the assessment no less frequently than once every~~
28 ~~six months.~~

29 (3) ~~Carrying out the case plan developed by the county.~~

30 (b) ~~When AFDC-FC is applied for on behalf of a child living~~
31 ~~with a nonrelated legal guardian the county welfare department~~
32 ~~shall do all of the following:~~

33 (1) ~~Develop a written assessment of the child's needs.~~

34 (2) ~~Update the assessments no less frequently than once every~~
35 ~~six months.~~

36 (3) ~~Develop a case plan that specifies how the problems~~
37 ~~identified in the assessment are to be addressed.~~

38 (4) ~~Make visits to the child as often as appropriate, but in no~~
39 ~~event less often than once every six months.~~

1 ~~(c) Where the child is a parent and has a child living with him~~
2 ~~or her in the same eligible facility, the assessment required by~~
3 ~~paragraph (1) of subdivision (a) shall include the needs of his or~~
4 ~~her child.~~

5 ~~(d) Nonrelated legal guardians of eligible children who are in~~
6 ~~receipt of AFDC-FC payments described in this section are~~
7 ~~exempt from the requirement to register with the Statewide~~
8 ~~Registry of Private Professional Guardians pursuant to Sections~~
9 ~~2850 and 2851 of the Probate Code.~~

10 ~~SEC. 6. This act is an urgency statute necessary for the~~
11 ~~immediate preservation of the public peace, health, or safety~~
12 ~~within the meaning of Article IV of the Constitution and shall go~~
13 ~~into immediate effect. The facts constituting the necessity are:~~

14 ~~In order to remove, as soon as possible, factors that could~~
15 ~~prevent or dissuade nonrelated individuals from becoming~~
16 ~~guardians of foster children and children at risk of becoming foster~~
17 ~~children, it is necessary that this act take effect immediately.~~

